

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11077 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. and
MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

SOMABHAI LALABHAI

Versus

SPECIAL LAND ACQUISITION OFFICER

Appearance:

MR SV PARMAR for Petitioner
Mr. Premal Joshi Asst. GOVERNMENT PLEADER for Respondent No. 1, 3
MRS KETTY A MEHTA for Respondent No. 2

CORAM : MR.JUSTICE R.BALIA. and
MISS JUSTICE R.M.DOSHIT

Date of decision: 30/11/1999

ORAL JUDGEMENT

1. The petitioner Somabhai Lalabhai and three others
have filed this petition for seeking mandamus to the
respondent Special Land Acquisition Officer to make

payment of the compensation of lands belonging to them and acquired for the purpose of Gujarat Housing Board through acquisition proceedings initiated by issuing notification dated 6-1-1990 under Section 4 of the Land Acquisition Act. Declaration under Section 6 of the Act made on 11-3-1991 that the land is needed for public purpose and thereafter inviting objections under Section 9, award was made on 11-12-1991. According to the award in respect of S.Nos. 635/1 admeasuring 48 are 56 sq. mts. a sum of Rs.4,15,188/- , S.No. 635/3 admeasuring 55 are 64 sq. mts., a sum of Rs.4,75,722/- and S.No. 636/1 admeasuring 36 are 42 sq. mts a sum of Rs.3,11,391/- totalling Rs.12,02,301/- was found to be payable to the present petitioners. Notice dated 16-12.1991 of this award was served under Section 12(2) also on the petitioner for accepting the amount.

2. It appears that in respect of each land one Jeevanlal M. Chaudhury along with others (hereinafter referred to as Chaudhary group) filed Regular Civil Suits No. 400 of 1992, 394 of 1992 and 395 of 1992 in respect of each survey number separately in the court of Civil Judge (S.D.) Ahmedabad (Rural) in which initially interim order was issued restraining the Special Land Acquisition Officer for maintaining status quo in respect of lands in question respectively. As possession was with the petitioners and could not be obtained by acquiring authority, and the amount of compensation is also paid to the present petitioners, defendants in the suits. Out of the three suits, R.C.S. No. 400 of 1992 pertaining to S.No. 635/1 has been rejected as not maintainable by order dated 14-11-1995, under Order VII Rule 7 of the C.P.C. Appeal against that order has also been dismissed by the Court of Extra Assistant Judge, Ahmedabad (Rural) by his order dated 24-10-1997. To these proceeding State was also party. According to learned counsel for the petitioner as well as the State, no further proceedings are pending hereafter. The respondents are not subject to any injunction any more in respect of survey number 635/1. This petition is only in respect of S.No. 635/1 as it transpires from the facts stated in para 3.1 that the only land that has been referred to in this petition is S.No. 635/1 and no other lands have been referred in this petition. So also facts about dismissal of Suit No. 400 of 1992 have only been mentioned with hope that other suits shall also met the same fate. We are informed by learned counsel for the State that appeals against the orders rejecting other two suits are still pending and in the appeals the State has been restrained from disturbing the status quo, hence amount of compensation payable under the aforesaid award, in respect of other lands viz.

635/3 and 636/1.

3. During the course of arguments it was also pointed out to the court that because of the orders made by this Court in Civil Application No. 1047 of 1991 in Special Civil Application No. 6748 of 1987 on 8.8.91 the Special Land Acquisition Officer has been directed to deposit the entire amount of the award in respect of all the lands under notification dated 6.1.1990 in question with Harisidh Cooperative Bank Limited and the same having been deposited in the Bank can only be disbursed with the leave of the court. The present petitioners were not party to that litigation and were not aware of the said petition until reply affidavit in this petition was filed by the State. In the circumstances, we have called for the record of the Sp.C.A. No. 6248 of 1987 and C.A. No. 1047 of 1991. The said record reveals that Sp.C.A. No. 6748 of 1987 was filed by one Devendraji Chaudhary not in respect of land acquisition proceedings with which we are presently concerned, but in respect of the affairs of the Harsidh cooperative Bank Limited to whom directions have been issued by Reserve Bank of India under Section 35A of the R.B.I. Act. Said petition is directed to challenge the vires of Section 35A of the R.B.I. Act as well as the validity of directions issued thereunder, for prohibiting the bank from disbursing the amounts to its depositors. In those proceedings in the first instance an order has been made by Division Bench on 31.1.1991, in order to secure that the bank realises the amounts payable to it by its debtors. The Special Land Acquisition Officer, Gujarat Housing Board was directed not to disburse the compensation amount if any payable to Jeevanlal Chaudhary, one of the debtors of the bank against the acquisition of number of survey numbers mentioned in the order. It will be pertinent to notice list of survey numbers shown in this order does not include S.No. 635/1, 635/3 and 636/1 in respect of which award has been made in favour of the present petitioner. Thereafter on an application being made by Jeevanlal Chaudhary in C.A. No. 1047 of 1991, the court made the following order on 8-8-1991:

"Considering the facts and circumstances, we dispose of this Civil Application No. 1047 of 1991 by directing that the applicant may be added as party, respondent No. 9 in Special Civil Application No. 6748 of 1987. It is further directed that respondent No.7 the Special Land Acquisition Officer Gujarat Housing Board will remit and deposit the compensation amount

pursuant to the award which has been made or which will be made and payable to the applicant and also other members of the Chaudhary Group in respect of the acquired lands as referred to in the Notification being Annexure A to this civil application with the respondent No. 1 Bank, viz. Harisiddh Co-operative Bank Limited. It is, however, directed that any such amount to be deposited by the respondent No. 7 should not be disbursed or utilised in any other manner by the said bank without the leave of this Court."

4. It was contended by learned A.G.P. that because of this order the compensation in respect of all lands under acquisition has to be deposited with the said Bank and he was denuded of authority to disburse any amount to the petitioner, except with the leave of court, during the operation of said order.

5. So far as the contention raised on behalf of the respondents that on account of the order passed by this Court in C.A. NO. 1047 of 1991 dated 8-8-91 the amount could not be paid to the petitioner is not well not founded. The Special Land Acquisition Officer was a party to the said proceeding, since making of the order dated 31-1-1991 to which we have alluded hereinbefore. Firstly, the order dated 8-8-1991 has to be read in the context of the earlier order operating in respect of the specified lands passed by this court, for not disbursing the amount of compensation payable in respect of specified lands against which the claim of the Bank for recovering debts due to it was claimed. Therefore primarily directions to deposit compensation amount in Harsidh Bank related in respect thereof. Obviously in the lands specified in order dated 31-1-1991 the lands to which petitioners lay claim are not included. Secondly and more importantly the clear direction under the order dated 8-8-1991 is to remit and deposit the compensation amount pursuant to the award which has been made and/or which will be made and payable to applicant (Jivabhai Ahmedabad) and also other persons of the Chaudhary Group in respect of the acquired lands as referred in the notification. The very fact that Jivabhai Madhaabhai has filed Civil Suits against present petitioners for the relief that amount payable under the award be not paid to them, clearly establishes that present petitioners are not members of Chaudhary group. The injunction was directed only against disbursement of such amount of compensation payable under the award to the applicant Jivaram Ahmedabad or his group member and not against other interests. The crux of the matter is that the

interim order extends to compensation amount payable to the applicant namely Jeevanlal M. Chahuan and also other members of Chaudhary group in respect of the acquired lands. Therefore, before the interim order could be made operative in respect of any compensation it must be shown that under the award compensation was made payable to Jeevanlal M. Chaudhary or any person of his group. It is not the case of respondents that under the award in respect of lands in S.No. 635/1, 635/3 and 636/1 was found payable to Jeevanlal Chaudhary or any of the member of Chaudhary group. If that is so the order dated 8-8-1991 does not reach that part of compensation. The order cannot be read in a pedantic manner devoid from the context and reference to the reliefs claimed by the applicants for whose benefit the orders were made. From the award it is apparent that the claimants of the lands in question have been treated to be the present petitioners and amount of compensation has been made payable to the present petitioners only and no interest of Jeevanlal M. Chaudhry has been considered for payment of compensation under the award. In fact it is common point that said Jeevanlal has neither lodged claim to compensation before Land Acquisition Officer nor he asked for any reference under the Land Acquisition Act about the question as to whom the amount of compensation in respect of lands shown to be in the holdings of present petitioners is payable or apportioned. Said Jeevanlal has instead resorted to a civil suit for getting declaration of his right to such compensation. The only impediment that could come in the way of making payment to the present petitioners was the orders made in civil suits filed by Jeevanlal M. Chaudhry and others on the basis of alleged banakhat executed by the present petitioners in their favour, which the present petitioners claims to have cancelled, for restraining the State from making of payment of compensation to the present petitioners. To the extent in interim order in that suit affected the substantive rights of the parties to the suit, parties would be governed by those orders. Admittedly as on today no interim order exists injuncting the respondents from making payment in terms of the award to the persons to whom such amount has been made payable under the award in so far as land comprising S.No. 635/1 is concerned. So far as other two lands are concerned, the same are undisputedly subject to the interim orders passed by the appellate court for maintaining status quo in respect of land that is to say the acquiring authority has been restrained from taking possession of the land and consequently compensation cannot be made to the claimants until he can deliver the possession of the lands in question.

6. It is in this background the petition which according to learned counsel for the petitioner is in respect of S.No. 635/1 only and as a result of dismissal of suit No. 400 of 1992 pertaining to S.No. 635/1 in our opinion there remains no impediment for the respondent Housing Board as well as the Special Land Acquisition Officer to make payment of compensation and take possession of land from petitioner bearing S.No. 635/1. We therefore direct that the respondents make payment of compensation payable in respect of S.No. 635/1 before obtaining possession from him. So far as compensation payable in respect of other lands are concerned, we are not called upon to express any opinion in that regard inasmuch as they are already subject matter of pending litigation and parties shall abide by the outcome of the said litigations.

7. Learned counsel for the petitioner also urged that he is entitled to get additional compensation amount payable to him under section 28A of the Act. This relief cannot be considered in these proceedings inasmuch as neither any claim has been made in this regard in this petition nor necessary facts have been placed for that purpose. Section 28A of the Land Acquisition Act envisages an application to be made within prescribed period from the date of making of the award in other cases before the Collector for seeking modification in the existing award and the proceedings follows in accordance with law thereafter. We therefore decline to entertain this prayer at this stage, however, without prejudice to petitioners right to claim relief in respect thereof from appropriate authority if the same is available under law to him.

8. Petitioner further challenges the acquisition proceedings. Such challenge has been made by way of amendment after filing of the petition. Suffice it to state that the acquisition proceedings were initiated in 1991 declaration in respect of which was made as early as on 17-3-1991 which is a conclusive proof of the fact that the land is required for public purpose. Award in that report was also made as far back as on 11.12.1991. No challenge to such acquisition was made until now. It is only because of the other legal proceedings relating to claim to compensation that amount of compensation could not be paid to the petitioner, though the same has been deposited in the Harsidh Bank as per the direction of this Court. Now the petitioner challenges the existence of public purpose itself. Challenge to the existence of public purpose at this belated stage after about 8 years

cannot be entertained. The contentions as to the validity of acquisition proceedings are not entertained.

Accordingly petition succeeds to the extent stated above.

There shall be no orders as to costs.

(Rajesh Balia, J) (R.M. Doshit, J)